

Message Text

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ACTION L-03

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E.O. 11652: N/A
TAGS: PBOR, PN
SUBJECT: PANAMA CANAL TREATIES

REF: JORDEN/FELDMAN TELECON FEBRUARY 2ND.

THE FOLLOWING IS AN INFORMAL TRANSLATION OF AN EXCERPT FROM
A PANAMANIAN SUPREME COURT DECISION OF OCTOBER 15, 1965
IN WHICH ONE DOMINGO H. TURNER CLAIMED THE UNCONSTITUTIONALITY
OF ARTICLE 5 OF THE 1903 TREATY BETWEEN PANAMA
AND THE U.S.: "...IT FINDS ITSELF COMPELLED TO
MAKE ELEMENTAL STATEMENTS AND TO START BY
AFFIRMING THAT A STATE CANNOT, THROUGH ITS
JURIDICAL AGENCIES DECLARE AN INTERNATIONAL AGREEMENT
INVALID BECAUSE IT VIOLATES THE NORMS OR PRINCIPLES
OF ITS CONSTITUTION, OR BECAUSE IT IS INCOMPATIBLE
WITH ITS EXISTENCE OR ITS INSTITUTIONAL DEVELOPMENT.
THE COURT JUDGES THAT AN INTERNATIONAL TREATY SUBSCRIBED
TO BY THE PANAMANIAN STATE CANNOT BE DISCLAIMED BY OUR
COUNTRY, WHICH IN EVIDENCE OF ITS MATURITY AND
APTITUDE FOR AN INDEPENDENT LIFE HAS DEDICATED,
IN THE THREE CHARTERS WHICH HAVE GOVERNED ITS
DESTINY SINCE THE ADVENT OF THE INTERNATIONAL
AGREEMENT, THE PRINCIPLE OF PACTA SUNT
SERVAND A(ART. #3 OF THE C.N. OF 1946). THIS DOES
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NOT IMPEDE ITS RIGHT TO RAISE ITS PROTEST, IN A
DIGNIFIED AND CIVIL MANNER, BEFORE INTERNATIONAL
OPINION; NOR DOES IT FORBID THE INVOCATION OF THE REBUS
SIC STANTIBUS CLAUSE UPON CLAIMING FOR ITS RESTORATION
BEFORE INTERNATIONAL COURTS, FOR THE PURPOSE OF
OBTAINING THE REESTABLISHMENT OF ITS RIGHTS, THE
CORRECTION OF THE INJUSTICE WHICH OPPRESSES IT,

AND THE RESPECT, WITHOUT DELAY, TO ITS DIGNITY AS
A SOVEREIGN NATION.

THE JURIDICAL FUNCTION (RETURNING TO ELEMENTAL
STATEMENTS) BECOMES EXHAUSTED AT THE SAME TIME AS
DOES THE SOVEREIGNTY FROM WHICH IT IS BORN. IT
IS OBVIOUS, THEREFORE, THAT THIS BODY DOES NOT HAVE
THE AUTHORITY TO PRONOUNCE JUDGMENT ON THE CLAUSES
OF AN INTERNATIONAL AGREEMENT, OF WHICH OUR COUNTRY
IS ONE OF THE PARTIES. THIS LIMITATION WHICH AFFECTS
THE AGENCIES OF INTERNAL JURISDICTION OF A COUNTRY IS
NOT SUFFERED BY INTERNATIONAL COURTS, UNDER WHICH
ALL NATIONS, WHICH HAVE EXPRESSLY GIVEN SUCH
ACKNOWLEDGMENT, ARE GOVERNED. THE DECISIONS OF
THESE COURTS DO HAVE THE POWER--ABSENT IN THE
SUPREME COURT OF PANAMA--OF SUBSTITUTING THEIR WILL
FOR THAT OF THE CONTRACTING NATIONS. THAT IS
TO SAY, THAT SUCH COURTS POSSESS ALL THE JURISDICTIONAL
ATTRIBUTES AND FULL JURISDICTION AT THE INTERNATIONAL
LEVEL. FROM ALL THIS IT IS DEDUCED THAT THE COURT
WOULD INVADE THE SCOPE RESERVED FOR THOSE COURTS AND
WOULD BECOME A JUDGE AND A PARTY IF IT SHOULD
PRONOUNCE JUDGMENT ON THE OBJECT OF THE CLAIM OF
DOMINGO H. TURNER, LAWYER, I.E., ON AN INTERNATIONAL
COVENANT AGREED TO BY THE REPUBLIC OF PANAMA.

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IN VIEW OF THE ABOVE CONSIDERATIONS, THE FULL
SUPREME COURT OF JUSTICE, EXERCISING THE POWER
CONFERRED ON IT BY ARTICLE 167 OF THE CONSTITUTION,
DECLARES THAT THERE IS NO REASON TO MAKE ANY
JUDGMENT REGARDING THE CONSTITUTIONALITY OF THE
CLAUSES OF THE AGREEMENT CONCLUDED BY OUR COUNTRY
WITH THE UNITED STATES OF AMERICA ON NOVEMBER 18,
1903"

2. WE ARE FORWARDING TO THE DEPARTMENT, ATTENTION
L-MR. FELDMAN, A COPY OF THE DECISION IN SPANISH.
JORDEN

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NNN

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